

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	

**REPLY COMMENTS OF GVNW CONSULTING, INC. ON THE PETITION
FOR DECLARATORY RULING OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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SUMMARY OF REPLY COMMENTS

A significant number of issues remain to be addressed by the Commission if wireless number portability is to be successfully implemented.

Because of the rate center disparity between wireless and wireline carriers, imposing intermodal LNP at this time is problematic, especially in rural areas. Allowing intermodal number portability, prior to resolving legitimate operational and competitive neutrality issues, would only exacerbate an already confusing situation. Additionally, many of the same issues apply in intramodal wireless number portability situations between rural wireless carriers and urban carriers with much larger coverage areas.

There is currently an incentive for some carriers to blanket all other carriers with “purported” BFRs, whether the requesting carrier actually offers service (can provide dial tone) in the area in question or not. The FCC should require that all requests have a date certain for implementation of LNP specified for the request to be considered a bona fide request per the Telecommunications Act of 1996. To discourage spurious requests, the FCC may want to consider penalties for missing committed service dates be applied to requesters.

An interconnection agreement is essential to number portability in order to ensure that proper routing, call completion, and service quality standards are sustained.

Rural wireless carriers may be placed at a similar cost and competitive disadvantage as rural wireline carriers by wireless number portability rules. The Commission should address those issues prior to implementation of wireless number portability.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including a broad spectrum of regulatory support including Local Number Portability (LNP) for communications carriers in rural America. The purpose of these reply comments is to respond to the Commission's Public Notice (DA 03-1753) dated May 22, 2003, seeking comments and replies responding to the May 13, 2003 petition of the Cellular Telecommunications & Internet Association (CTIA). CTIA has requested that the Commission clarify carrier obligations with respect to a number of Local Number Portability (LNP) implementation issues. CTIA has asserted that there are a number of outstanding issues that cannot be resolved without specific direction from the Commission. GVNW agrees with CTIA and numerous other commenters on that point, but disagrees with CTIA on a number of its other conclusions.¹

GVNW agrees with the concerns expressed by several parties over the process by which wireless number portability has, and is, being addressed by the Commission. In particular, we agree with the thrust of comments by Cingular Wireless, in which it questions the Commission's statutory authority to impose LNP on wireless carriers, and with Alltel's succinctly expressed concerns over the process by which LNP rules are being developed. GVNW is also watching with interest a subsequent filing made by

¹ Our concerns are captured in part by BellSouth at 2, where BellSouth objects "to CTIA's constant and unfounded criticism of the wireline industry. In CTIA's version of the number portability saga, the wireless industry is merely a passive victim subject to the evil actions of wireline carriers. This assertion is preposterous."

CTIA, et al, which requests repeal of CMRS LNP rules².

Wireless carriers seek to ignore the status of LNP viability

AT&T Wireless (AWS) is incorrect when they assert “there is no basis for the ILEC assertion that they should not have to port to wireless carriers until certain issues have been resolved.”³

Since NXXs cannot be ported across rate center boundaries⁴, numbers from a small ILEC would not be portable between the ILEC’s rate center and a separate wireline rate center. Thus, intermodal portability becomes de facto one-way portability from wireline to wireless for all wireline rate centers where the wireless carrier has not established its own wireless rate center and NXX. Wireline carriers in the other, smaller rate centers face one-way portability that allows customers to leave them while retaining their number, but does not allow them to obtain customers from the wireless carriers in a similar manner.

Intermodal portability will cause substantial customer confusion, and will provide an impetus to customers to choose wireless service. This situation is neither technologically nor competitively neutral.

Public safety issues cannot be ignored

It is unclear from the various comments filed by the parties whether all E911 Public Safety Answering Points (PSAPs) can deal with NXXs split between wireless and

² “Expedited Petition for Rulemaking to Rescind the CMRS LNP Rule” filed June 16, 2003 by CTIA, Cingular, AT&T Wireless Services, and Alltel.

³ AWS, page 3.

⁴ NANC LNPA Working Group – Wireline - Wireless Service Provider Portability “Rate Center Discussion”, February 27, 1998, Section 1.9, and NANC LNP Architecture and Administrative Plan –

wireline carriers. Currently, public safety agencies determine the physical location of wireline customers from entries in the Automatic Location Identification (ALI) database. Since physical location of wireline customers does not change, the ALI database is updated only when additions, moves, or changes by customers require it. Information is input by the ILEC as part of its service order process on a periodic (usually less than 24 hour) basis. On the other hand, since the location of wireless customer can and does change, the wireless carrier mechanism is quite different. Until certain information has been verified⁵, the FCC must postpone intermodal number portability in the interest of public safety.

The Bona Fide Request Process should be a prerequisite

Due to some “mass mailing” attempts by some of the large national wireless carriers, the bona fide request issue is emerging as a significant one due to the economics involved for small carriers of either modality. The cost to equip switches and pay ongoing LNP fees to the LNP database operators is significant for small rural wireline and wireless carriers.⁶ Because they have not received a bona fide request for LNP⁷, many small carriers have not incurred these costs due to a lack of demand for the service.

Section 7.3. This would be LOCATION Portability, for which technical specifications have not yet been developed, and not LOCAL Number Portability.

⁵ It must be ascertained that all ALI and PSAP equipment can deal with location information within a single NXX where some of the numbers will follow the wireline format, and some the wireless format. It is not at all clear that this is currently the case.

⁶ Comments of First Cellular of Southern Illinois at p. 2.

⁷ Despite the Verizon Wireless assertion to the contrary concerning their “mass mailing”, many carriers that received this letter from Verizon have still not received a BONA FIDE request. Prerequisite to a BFR is a local interconnection agreement.

There is currently an incentive for carriers to issue BFRs with a request for service “at a future date” that is not specified, or to blanket all other carriers with “purported” BFRs, whether the requesting carrier actually offers service (can provide dial tone) in the area in question or not.⁸ The FCC should require that all requests have a date certain for implementation of LNP specified for the request to be considered a bona fide request per the Telecommunications Act of 1996. To discourage spurious requests, the FCC may want to consider penalizing requesters for missing committed service dates.

Requiring carriers to implement a costly feature without demand for the service as evidenced by an actual bona fide request for implementation of the service on a given date will require expensive upgrades where no one uses the service.

Interconnection Agreements are required if the Commission wants LNP to work

CTIA states in its filing⁹ that number portability should be required without the benefit of an interconnection agreement¹⁰ that spells out terms and conditions.

AWS asserts that approval of lengthy interconnection agreements is unnecessary¹¹ for the “simple type” of agreement required for establishing LNP obligations. This is not the case, as stated by USTA at page 5: “*An interconnection agreement is essential to*

⁸ Several of GVNW’s small rural wireline and wireless clients have received what are purported to be BFRs from Verizon Wireless, as noted on page 6 of their Comments. Verizon Wireless’ rationale here appears to be that the service areas of the two carriers overlap. However, in many of these cases, Verizon Wireless has chosen not to build cell sites in these areas and cannot offer service in any sense other than on a map. Number portability in these situations is meaningless. Customers cannot possibly receive a benefit, because the carrier they are porting to, Verizon Wireless, cannot provide them telecommunications service for the ported number in that area. Requiring implementation of number portability in these situations simply adds to costs while providing no benefit.

⁹ CTIA petition at p. 16.

¹⁰ CTIA’s purported template has not been made publicly available in this proceeding or any other industry forum such as the NANC (BellSouth, page 10).

¹¹ AWS complaint (page 7) about negotiating in 50 states is nothing more than whining about a legitimate obligation.

number portability in order to ensure that proper routing, call completion, and service quality standards are sustained.”

The wireless carriers’ repeated attempts to avoid compensating ILECs for the use of their facilities invalidates any suggestion that a simple agreement is viable.¹² AWS claim in footnote 14 that wireless carriers are fundamentally different does not relieve them of any obligation to compensate an ILEC for the use of its facilities. The same flawed reasoning was used by AWS’s parent company in its petition that was ostensibly a thinly veiled attempt to seek to avoid access charges because they are changing their internal technology platform.¹³

Similarly flawed is the Verizon Wireless request (page 2) for “*barrier-free*” porting contracts, as well as Sprint Corporation’s comment at ii that the Commission should “*clearly express that absence of an agreement does not relieve a carrier from its obligation to port numbers.*” These comments ignore the basic concept that by requiring any party to provide a service without a contract is tantamount to forcing that party to provide service at terms and conditions dictated by the other party.¹⁴ Such action

¹² The experience of GVNW’s ILEC clients with many wireless carriers is summarized very well in the comments of SBC Communications at p. 13: “The CTIA and its members have not tried the interconnection agreement process and found it wanting, they have simply not tried it at all.”

¹³ *In the Matter of AT&T Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Petition of AT&T (filed Oct. 18, 2002).

¹⁴ This is not a trivial issue. In some cases where the ILEC has been able to measure terminating access by carrier, it is often found that 20 percent of the terminating access minutes are from wireless carriers that are not paying the ILEC for terminating access. Such actions cause ILEC revenue requirement shortfalls, a confiscation of ILEC property, and add to the costs paid by carriers that do play by the rules, and ultimately by end users. Interconnection agreements are needed to prevent such abuses. In many instances, when confronted with this evidence and a request by the rural ILEC to enter into an interconnection agreement to deal with this issue, wireless carriers have been less than eager to enter into agreements. In many cases, the current lack of interconnection agreements is not based on lack of any action by the rural ILEC in this area, but a desire by some wireless carriers to avoid paying access charges they are legally obligated to pay.

provides an unfairly acquired competitive advantage for wireless carriers, and creates cost shifting from wireless to wireline customers. Furthermore, interconnection agreements are essential to a clear understanding of the means by which intercarrier traffic will be exchanged.

We concur in OPASTCO's statement on page 3 of their filing:

In order to insure that LNP actually works as it should, the Commission should clarify that interconnection agreements are a necessary pre-requisite for LNP regardless of the technology platform used by the requesting carrier.

Wireless Number Portability will competitively disadvantage rural carriers

The Commission has yet to clarify the obligations of some rural wireless carriers to participate in number portability¹⁵. A significant number of issues remain to be addressed by the Commission if wireless number portability is to be successfully implemented. One of the more important issues that needs to be addressed by the Commission is the unfair competitive advantage that large wireless carriers may receive over small and rural carriers. GVNW, Rural Telecommunications Group and others addressed the issue of competitive inequities caused by de-facto location portability in the initial comments.¹⁶

Rural wireless carriers will also be harmed competitively if the large carriers are permitted to essentially invalidate legitimate early termination clauses in existing customer contracts. As Cingular Wireless (Cingular) points out in page ii of their filing:

¹⁵ "...presently there are no agreed on industry standards governing landline/CMRS porting and CTIA has identified many disputes among carriers as to what obligations exist. The FCC needs to step in where the industry process has stalled and provide clarity on how inter-modal porting is to work in November." Verizon Wireless comments at p. 2.

¹⁶ As RTG points out in its comments at p. 9, "If the Commission fails to ensure an equal playing field for both large and small carriers then consumers will have lost the potential benefit of competition, and WNP will become nothing more than another anti-competitive tool for large carriers to use against small and rural carriers."

If implemented, LNP will present the first time that customers in the highly competitive CMRS marketplace can convey decisions to terminate service to their current carrier through a competing carrier. As a result, customers face potential harm from losing the opportunity to be reminded of the agreed-upon early termination fee.

The comments of Verizon Wireless at page 4 capture succinctly a major difference between small and large wireless carriers. While Verizon Wireless may be large enough to ignore or write off amounts due for early termination fees, most small carriers are unable to absorb such losses. In its comments, Cingular points out the problem with the Verizon Wireless suggested approach. Cingular states that it has negotiated agreements with its customers wherein “customers have exchanged their ability to port their number when they owe an early termination fee or past-due balance for such benefits.” (Cingular, ii)

Porting Intervals should be flexible

The request in the CTIA petition (at page 15) that the FCC resolve the porting interval issue by requiring all carriers to port on intervals that appear to be best suited to the large wireless carriers ignores the needs of both rural wireline and wireless carriers. This overtly inflexible position does not take into account the operating procedures of other carriers. Different carriers have different intervals for a variety of reasons.

In the LNP First Report and Order (paragraphs 164-167), the Commission recognized that there are different resources and technological requirements to implement LNP, which may result in different schedules for affected carriers. This continues to hold true. As BellSouth notes on page 4 of their filing:

Moreover, the porting of a number from a wireline carrier to a wireless carrier (instead of another wireline carrier) does not somehow eliminate the need for the

various order and confirmation processes that enable porting. These processes remain necessary.

In addition, it is unreasonable to shorten porting times that have worked well in the rural community for years, and impose on rural carriers the additional costs associated with increasing office hours and staff sizes to meet those shorter times, just for the convenience of CTIA and its members.

Conclusion

Despite congressional pressure to act, the Commission should heed the warning that a macro-only view of intra and inter-modal wireless number portability serves to ignore some of the important micro implementation issues that significantly impact rural providers of local number portability.

It is evident from the numerous comments filed in this proceeding that the likelihood of a successful implementation of wireless number portability is small unless and until the Commission resolves the multiple issues brought up by CTIA and commenters on its petition.

Respectfully submitted,

electronically submitted through ECFS

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